IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL APPEAL NO. 39 OF 2003

Employees State Insurance
Corporation, represented
by Insurance Inspector,
E.S.I. Corporation,
Defence Colony, Porvorim,
Goa. ... Appellant.

versus

1. M/s. Bhakti Garment,
   Goa D2/14 Tivim
   Industrial Estate,
   Mapusa, Goa.

2. Shri Ulhas M.Pilankar,
   Ansabhat, Mapusa, Goa. ... Respondents.

Mrs. A. Agni, Advocate for the Appellant.

Mr. G. K. Sardessai, Advocate for the Respondents.

CORAM: P. V. HARDAS, J.

DATED: 12TH SEPTEMBER,2003.

ORAL JUDGMENT

This Appeal is filed by the Appellant/Original Complainant being aggrieved by the Judgment of the learned Judicial Magistrate First Class, Panaji, dated

21st November, 2002, in Labour Criminal Case No.48/OA/98/C, acquitting the Respondents/Accused for an offence under Section 85(a) and punishable under Section 85/Ib of the Employees State Insurance Act, 1948.

2. The facts in brief as are germane for the decision of this Appeal are set out hereunder:-

A complaint came to be filed by the Appellant/Original Complainant in respect of the offence under Section 85(a) of the Employees State Insurance Act, 1948 against the present Respondents/Accused complaining therein that the Respondents/Accused had failed to pay the contribution in respect of the employees of the factory known and styled as M/s Bhakti Garment for the wage periods October, 1996 to September, 1997. The learned Trial Court vide Exh.4 framed the substance of accusation. The Respondents/Accused denied their guilt and claimed to be tried. The learned Trial Court by its Judgment impugned in the present Appeal acquitted the Respondents/Accused principally on the ground that the period of limitation prescribed for taking cognizance of the offence was of one year. It was alleged that the Respondents/Accused had not paid the contribution for the wage periods October, 1996 to September, 1997. The complaint admittedly came to be filed in the Court on 3rd May, 1998. The learned Trial Court holding that the

period of limitation prescribed under Section 468 was of one year held that the offences committed on 22nd November, 1996 and 22nd December, 1996 were barred by time. The learned Trial Court also came to the conclusion that in respect of the offences alleged to have been committed on 22nd January, 1997, 22nd February, 1997, 22nd March, 1997 and 22nd April, 1997 were also barred by time as the alleged complaint was filed after one year of the commission of the offences alleged. The learned Trial Court held that in respect of the offences on 22nd May, 1997, 22nd June, 1997, 22nd July, 1997, 22nd April, 1997, 22nd September, 1997 and 22nd October, 1997, the same were within limitation but since each offence was a separate and distinct offence, the Complainant ought to have filed separate individual cases in respect of each offence. In paragraph 10 of the Judgment, the learned Trial Court has summed up the evidence adduced by the Complainant. According to the learned Trial Court, the Complainant had not produced any document on record to show that the Accused had not paid the contribution for the wage periods October, 1996 to September, 1997.

3. It is extremely unfortunate that there has been no appreciation of the evidence of the Complainant. In a terse manner, the learned Trial Court has held P.W.1 to be an unreliable witness. The entire approach of the learned Trial Court has been extremely cursory and a

terse approach.

4. Mrs. A. Agni, learned Counsel appearing on behalf of the Appellant has invited my attention to Section 468 of the Code of Criminal Procedure. Admittedly, under Section 85 of the Employees State Insurance Act, 1948, the punishment that is prescribed for an offence punishable under Section 85(a) is for a term which may extend to three years. The provisions of Section 468(2)(c) prescribes limitation for three years if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years. Section 468(2)(c) would squarely apply in respect of an offence punishable under Section 85(a) of the Employees State Insurance Act, 1948. The learned Trial Court, therefore, was in error in holding that some of the offences alleged against the Accused were barred by time. The learned Trial Court was also in error in holding the period of limitation prescribed was of one year. There is absolutely no appreciation of evidence. The Judgment according to me, therefore, is wholly perverse and cannot be sustained.

5. Since, the learned Trial Court has proceeded on an assumption that some of the offences alleged were beyond limitation, according to me, it would be proper to remit the matter back to the learned Trial Court by

setting aside the impugned Judgment for decision afresh.

6. Mr. G. K. Sardessai, learned Counsel appearing on behalf of the Respondents/Accused has also urged that in the event this Court remits the matter to the learned Trial Court for decision afresh, the Respondents/Accused may be given an opportunity of further cross-examining the Complainant's witness or examining other witnesses in support of the defence.

7. Mrs. A. Agni, learned Counsel appearing on behalf of the Appellant has then stated that the Complainant may also be given an opportunity of examining other witnesses, if felt necessary.

8. In the result, therefore, Criminal Appeal No.39 of 2003 is allowed. The impugned Judgment is quashed and set aside. The matter is remitted back to the learned Trial Court after giving an opportunity to the Complainant of examining other witnesses, if the Complainant so desires and giving an opportunity to the Respondents/Accused to further cross-examine the witnesses already examined by the Complainant or to examine any other witnesses in its defence. It is needless to add that if new witnesses are examined by the Complainant, the Respondents/Accused will have a right of cross-examination. It is also needless to state that

parties will be entitled to produce any other documents in the Trial Court on which they propose to rely.

P. V. HARDAS, J.

RD.